ONTARIO SECURITIES COMMISSION

PERSPECTIVES

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inside...

FEATURE

New Integrated Disclosure System Would Focus On Continuous Disclosure

The Canadian Securities Administrators (CSA) have published a concept proposal on a proposed Integrated Disclosure System (IDS) that would require participating issuers to provide more comprehensive continuous disclosure. The system is intended to raise the standard of disclosure provided to the marketplace on a continuous basis while making new financings faster and more efficient.

The CSA are asking for comment by June 1, 2000 and aim to introduce the system on a two-year pilot project basis in 2001.

At present, standards for prospectus disclosure are higher than for continuous disclosure, although the vast majority of trading activity occurs in the secondary markets. The proposed IDS would better integrate the type and extent of the information that issuers must provide to investors in both the primary and secondary markets. In particular, the IDS would change securities regulation in the following areas:

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POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Changes to General Prospectus Requirements Proposed

On December 17, 1999, the OSC published for third comment proposed changes to proposed Rule 41-501 - General Prospectus Requirements. Among the most significant changes being proposed to the rule are:

- The addition of limited exceptions to the audit requirement for "junior issuers";
- The revenue test for determining the significance of an acquisition to an issuer has been replaced by an investment test;
- The significance tests are now to be applied at two points in time: first, at the time of acquisition and, again, at the time of filing the preliminary prospectus; and
- The addition of quantitative standards for determining whether a disposition is significant to the issuer.

The proposed changes to proposed Rule 41-501 were published in a supplement to the OSC Bulletin.

For more information, please call **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245, **Kathryn Soden**, Director, Corporate Finance, (416) 593-8149, **Julie Bertoia**, Sr. Accountant, Corporate Finance, (416) 593-8083, or **Rossana Di Lieto**, Legal Counsel, General Counsel's Office, (416) 593-8106.

(1999) 22 OSCB (LF Supp 2) December 17, 1999

Proposed Changes to Short Form Prospectus Distributions

On December 17, 1999, the CSA published proposed changes to proposed National Instrument 44-101 - Short Form Prospectus Distributions, for third comment. The substance and purpose of the proposed Instrument is to reformulate National Policy 47 - Prompt Offering Qualification System. Among the most significant of the proposed changes to the Instrument are the following:

- Each type of qualification criteria has been expanded to require an issuer filing a preliminary short form prospectus more than 90 days after its most recently completed year end to have filed its financial statements for that year in order to be qualified to file a short form prospectus;
- The revenue test for determining the significance of an acquisition to an issuer has been replaced by an investment test;
- The significance tests are now to be applied at two points in time: first, at the time of acquisition and, again, at the time of filing the preliminary prospectus;
- Quantitative standards for determining whether a disposition is significant to an issuer have been added; and
- The requirement to provide selected quarterly information and discussion has been revised to ensure that MD&A distributed to shareholders includes both the quarterly results and a discussion of those results.

The proposed changes to proposed National Instrument 44-101 were published in a supplement to the OSC Bulletin.

For more information, please call **Gary Tamura**, Legal Counsel, Corporate Finance, (416) 593-8119, **Julie Bertoia**, Senior Accountant, Corporate Finance, (416) 593-8083 or **Iva Vranic**, Manager, Corporate Finance, (416) 593-8115.

(1999) 22 OSCB (POP Supp 2) December 17, 1999

Rule on OTC Derivatives Out for Comment

On January 7, 2000, the OSC republished for comment Proposed Rule 91-504 Over-the-Counter Derivatives and the Companion Policy. The comment period expired on February 6, 2000.

The Proposed Rule deals with the regulation of transactions involving OTC derivatives in Ontario. It provides complete exemptions from Ontario securities law for some transactions and provides exemptions from the registration and prospectus requirements of the Act for other transactions.

Key changes in the Proposed Rule and Companion Policy include the amendment to the definitions of "exempt transaction" and "OTC derivatives" transaction and the decrease in the minimum capital threshold for certain institutions to $25 million.

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257 or **Tracey Stern**, Legal Counsel, Market Regulation, (416) 593-8167.

(2000) 23 OSCB January 7, 2000 Page 51

Commission Makes Rule on Insider and Issuer Bids, Going Private and Related Party Transactions

The OSC has made its Rule and Companion Policy (Rules 61-501 and 61-501 CP) on insider bids, issuer bids, going private transactions and related party transactions.

The Rule reformulates OSC Policy Statement No. 9.1, maintaining such protections as independent valuations, majority of minority approval and enhanced disclosure. The Rule and Companion Policy have been revised to incorporate certain changes suggested in comments previously received by the Commission.

If the Minister of Finance does not approve the Rule, reject the Rule or return it to the Commission for further consideration, or if the Minister approves the Rule, the Rule will come into force on May 1, 2000.

For more information, please call **Stan Magidson**, Director, Take Over/Issuer Bids, Mergers & Acquisitions, (416) 593-8124.

23 OSCB February 11, 2000 Page 965

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

Five-Year Advisory Review Committee Appointed by the Minister of Finance

In December 1999, the Minister of Finance appointed an advisory committee to review the legislation, regulations, and rules relating to matters dealt with by the Commission and the legislative needs of the Commission. The Securities Act provides for a legislative review at regular five-year intervals. This is the first of such reviews. The advisory committee will be seeking public comment and will prepare a report of its review and recommendations for the Minister.

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The advisory committee is chaired by Purdy Crawford who is the Chairman of Imasco Limited and acts as a director on the boards of several public companies. The other members of the committee are: Carol Hansell, Partner, Davies Ward & Beck; William Riedl, President and C.E.O. of Fairvest Securities Corporation; Helen Sinclair, C.E.O., Bank Works Trading Inc.; David Wilson, Co-Chairman, Scotia Capital and; Susan Wolburgh Jenah, General Counsel, Ontario Securities Commission.

For more information, please call **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245.

Corporate Finance Branch Reorganization

As of December 18, 1999, the Administration Document Management (ADM) Team in the Corporate Finance Branch was dissolved and ADM staff were reassigned to existing Corporate Finance Teams.

The Financial Examiners (Ann Mankikar, Mary Ann Slocombe, and Josh Cottrell), Continuous Disclosure Assistant (David Mattacott), and Continuous Disclosure Clerk (Corrie Rees-Jones) were transferred to the Continuous Disclosure Team under Heidi Franken's leadership.

The Selective Review Officer (Fareeza Baksh) and the Applications Administrator (Violet Persaud) were transferred to Corporate Finance Team 1 under the leadership of Margo Paul.

The Review Officers (Merle Shiwbhajan and Elizabeth Henry) and the Administrative Support Clerk (Moses Seer) were transferred to Corporate Finance Team 2 under the leadership of Iva Vranic.

Insider reports will be reviewed by the Continuous Disclosure Team going forward.

Telephone numbers are unchanged. New fax numbers are:

Director's Office/Advisory Services/	
Take Over Bid Team	**Fax # (416) 593-8177**
Continuous Disclosure Team	**Fax # (416) 593-8252**
Corporate Finance Team 1	**Fax # (416) 593-8244**
Corporate Finance Team 2	**Fax # (416) 593-3683**
Dedicated Insider Trading	**Fax # (416) 593-3666**

For more information, please call **Kathryn Soden**, Director, Corporate Finance Branch, (416) 593-8149.

Court Rules OSC Can Sanction Lawyers

On February 15th, the Ontario Superior Court of Justice ruled that the Ontario Securities Commission has jurisdiction to sanction lawyers. Lawrence Wilder, a lawyer for YBM Magnex International, had argued that only the Law Society of Upper Canada has the right to decide if an Ontario lawyer has behaved in an improper manner.

A panel of three judges rejected that argument. Mr. Justice James Southey, speaking on behalf of the panel, said that the OSC "has the jurisdiction to deal with the proceedings".

Preliminary Corporate Disclosure Survey Results

In 1999, the Commission's Continuous Disclosure Team sent a voluntary survey to 400 public companies to gather general information on corporate disclosure policies and practices. The OSC received 170 responses – a 43 percent response rate.

Preliminary results of the survey show:

- 71 percent of the respondents do not have written corporate disclosure policies.
- 45 percent of respondents with market capitalization greater than $500 million have written policies, while 20 percent of those with market capitalization under $500 million do.
- 81 percent of respondents have one-on-one meetings with analysts.
- 2 percent of the respondents do not comment on draft analyst reports.
- 27 percent of respondents do not have a "black-out" period prior to scheduled earnings releases during which no market sensitive information is provided.
- 19 percent of respondents broadcast their quarterly conference calls via the Internet or other means.

81 percent of respondents participate in one-on-one meetings with analysts.

A report on the final results will be released this year. OSC Staff are currently analysing the findings and will consider them in determining what follow-up action is necessary and appropriate. As well, staff members are monitoring developments in the US following the Securities and Exchange Commission's announcement on December 15, 1999 of the proposed rule, Regulation FD (Fair Disclosure). This rule would bar companies from selectively disclosing material information.

For more information, please call **Heidi Franken**, Manager, Continuous Disclosure Team, Corporate Finance Branch, (416) 593-8249.

23 OSCB January 7, 2000 Page 9

Financial Stability Forum

David Brown, Chair of the Ontario Securities Commission, has joined with other senior executives from the international regulatory community in the Financial Stability Forum working group charged with reviewing and recommending actions to reduce the destabilising potential of highly leveraged institutions. The group is made up of top staff members from the world of banking and securities as well as the International Monetary Fund. The parent committee - the Financial Stability Forum (FSF)- was created to promote international financial stability, improve the functioning of markets, and reduce systemic risk.

The Forum brings together on a regular basis national authorities responsible for financial stability in significant international financial centres, international financial institutions, sector-specific international groupings of regulators and supervisors, and committees of central bank experts. The FSF seeks to co-ordinate the efforts of these various bodies.

Demutualization of the TSE

The OSC has been developing an appropriate regulatory framework to address the demutualization of The Toronto Stock Exchange. Demutualization provides for the continuance of the Exchange as a for-profit corporation. Following demutualization, the Exchange would be owned by shareholders instead of member firms based on holding a seat.

Legislation amending the current Toronto Stock Exchange Act and providing for the continuance of the Exchange under the Business Corporations Act (Ontario) received Royal Assent on December 14, 1999.

The OSC approved the continuance of the Exchange

Pursuant to the legislation, the Commission must approve the continuance before it can become effective. As a condition of approval, the OSC requested that the Exchange submit to a recognition process. Proposed criteria for recognition were developed. In the December 24, 1999 OSC Bulletin, the OSC requested comment on the proposed criteria for re-recognition of the Exchange. The OSC also published the TSE's commentary on the OSC's proposed recognition criteria. The proposed recognition criteria address several areas including: corporate governance, access, financial viability, TSE Regulatory Services (TSE RS). The comment period ended January 31, 2000. Staff considered the comments that were received. On February 15, 2000, the OSC approved the continuance of the Exchange on the basis that the Exchange has accepted the terms and conditions in the recognition order.

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257, **Susan Greenglass**, Legal Counsel, Market Regulation, (416) 593-8140, or **Jennifer Elliott**, Legal Counsel, Market Regulation, (416) 593-8109.

22 OSCB December 24, 1999 Page 8283

Third Annual Investor Education Week

April 10th will see the launch of the third annual Investor Education week in Ontario, an event that grew out of a project started by the Council of Securities Commissions of the Americas or COSRA. COSRA members, including the Ontario

Securities Commission, have agreed that this year's theme is "Get the facts. It's your money. It's your future."

Under that banner, all COSRA members, including the securities commissions in Canada, will be carrying out a number of projects to highlight important market changes and risks that investors should be aware of to protect themselves at the start of the 21st century.

April 10th will see the launch of the third annual Investor Education week in Ontario.

For more information, please call **Nancy Stow**, Manger, Investor Education, (416) 593-8297.

Education Program on NI 81-102 Mutual Funds and NI 81-101 Mutual Fund Prospectus Disclosure

Two new mutual fund rules — NI 81-102 Mutual Funds and NI 81-101 Mutual Fund Prospectus Disclosure — replaced NP 36 and NP 39 respectively on February 1, 2000.

The OSC has been offering sessions on the new rules and their implications.

In order to facilitate a smooth and efficient transition to the new regime, the Ontario Securities Commission has been offering sessions to educate legal advisers and mutual fund companies on the new rules and their implications. During these sessions, the OSC will outline the expectations of the Canadian Securities Regulators with respect to the mutual fund disclosure required by NI 81-101 and answer any questions on NI 81-102. Members of the Commission's Investment Funds team will be available to conduct informal sessions at private offices during January through to May.

If you are interested in scheduling a session, please contact **YuMee Chung**, Legal Counsel, Investment Funds Team, (416) 593-8076.

Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organisations

On November 30, 1999, the OSC executed The Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organisations.

The Declaration is an agreement between certain supervisory authorities of futures exchanges and clearing organizations. It serves to facilitate the sharing of information necessary to strengthen regulatory supervision, minimize systemic risk, prevent or limit potential abusive or manipulative practices and enhance customer and investor protection.

The Declaration will become effective subject to the approval of the Minister of Finance.

For more information, please call **Tracey Stern**, Legal Counsel, Market Regulation, (416) 593-8167.

23 OSCB January 7, 2000 Page 9

Investor Alert on Heritage Bonds

The OSC is warning consumers to use extreme caution if solicited to buy an investment called Ontario Heritage Bonds.

The flyer claims that the bonds are sponsored and guaranteed by the Government of Ontario.

OSC Staff recently became aware of a flyer promoting the Ontario Heritage Bond Program as a way for investors to earn a 10 percent return on their investment. The flyer, which appears on letterhead similar to some government agencies', claims that the bonds are sponsored and guaranteed by the Government of Ontario. In fact, the Government of Ontario has not issued, sponsored or guaranteed any bonds in the name Ontario Heritage Bonds.

The Commission warns investors to use extreme caution if solicited to purchase bonds with the following characteristics:

- Calling themselves Ontario Heritage Bonds.
- Sponsored and guaranteed by the Government of Ontario.
- Proceeds to be used to fund the preservation of historic structures in Ontario.
- Paying 10 percent per year paid semi-annually.
- Subscriptions are tax-free if held to maturity.
- Minimum investment of $5,000; maximum of $40,000.

The OSC suggests that anyone approached to invest in this or a similar investment should contact the Commission or other provincial securities regulator.

For more on Investor Alerts, please go to the OSC Web site at *www.osc.gov.on.ca*

Staff Notice On Goodwill Charges

Purpose

The purpose of the Staff Notice on Goodwill charges is to set out Staff's views with respect to the application of paragraphs 1580.82-.83 of the CICA Handbook ("the Handbook") to charges for amortization of goodwill associated with long-term investments accounted for using the equity method.

Issue

Paragraphs 1580.82-.83 of the Handbook allow goodwill amortization expense and goodwill impairment charges to be presented on a net-of-tax basis as a separate line item in the income statement, following a subtotal that is descriptive of the items that follow. Basic and fully-diluted per share amounts may also be presented for this subtotal.

The question has arisen as to whether it is appropriate, in accordance with paragraphs 1580.82-.83, to present charges for amortization of goodwill associated with long-term investments accounted for using the equity method on a net-of-tax basis as part of an income statement line item for goodwill charges. Goodwill associated with long-term investments accounted for using the equity method includes both (i) goodwill that is recorded within the financial statements of the investee itself, and (ii) goodwill notionally included in the carrying value of the investment as recorded by the investor.

Paragraph 3050.12 of the Handbook specifies that the application of the equity method of accounting results in the net income of the investor being the same as the consolidated net income would have been had the financial statements of the investee been consolidated with those of the investor. Paragraph 3050.09 of the Handbook lists the items recorded by an investee that should be disclosed in the investor's financial statements according to their nature. This paragraph does not contemplate that charges for amortization of goodwill would be presented separately in the investor's income statement. In Staff's view, charges for amortization of goodwill associated with long-term investments accounted for using the equity method of accounting therefore fall outside the scope of paragraphs 1580.82-.83 of the Handbook.

Staff's Views

In Staff's view, the presentation described in paragraphs 1580.82-.83 of the Handbook is permissible for only those charges for amortization of goodwill associated with business combinations accounted for using the purchase method, as defined in CICA 1580.07. This presentation is not available in respect of charges for amortization of goodwill associated with long-term investments accounted for using the equity method of accounting.

For more information, please call **John Hughes**, Sr. Accountant, Chief Accountant's Office, (416) 593-3695.

CANADIAN SECURITIES ADMINISTRATORS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is the organization of the securities regulators of the provinces and territories of Canada.

Concentration Restriction for Index Mutual Funds to be Changed

The remarkable performance of Nortel Networks Corp. as measured against The Toronto Stock Exchange 300 Index has prompted the CSA to propose amendments to the concentration investment restriction for index mutual funds in National Instrument 81-102. However, the concentration restriction will remain unchanged for actively managed mutual funds.

The concentration restriction in NI 81-102 prohibits a mutual fund from purchasing securities of any issuer if, as a result of such purchase, the mutual fund would have more than 10% of its net assets invested in securities of that issuer. Last year, when Nortel's weighting in the TSE 300 began to exceed 10%, the CSA granted relief from the concentration restriction for index mutual funds so that they could continue tracking the composition of their target indices. A new limit of 15% was imposed. As the value of Nortel shares continued to increase, by late 1999 its weighting in the TSE 300 exceeded 15%.

As a result, the CSA has decided to change the concentration restriction as it applies to index mutual funds. The intention is to permit such funds to continue pursuing their stated investment objective of tracking a specified index. It is expected that proposed changes to NI 81-102 will be published for comment in Spring 2000. The CSA will seek comment on whether index funds should be subject to any restrictions on investments in one issuer.

In the interim, the OSC is prepared to grant exemptive relief for index mutual funds to permit them to purchase securities of any one issuer so long as it does not result in more than 25% of the net assets of the mutual fund being invested in any one issuer. Such relief will be limited to those mutual funds adversely affected by the 15% limit.

Despite submissions from various industry participants, the CSA is not convinced that it is appropriate to amend the concentration restriction for actively managed mutual funds. The concentration restriction is intended to ensure that mutual funds are sufficiently diversified so as to minimize risk and ensure sufficient liquidity to meet redemption requests from investors.

For more information, please call **Paul Dempsey**, Legal Counsel, Investment Funds, (416) 593-8091.

Dual Reporting of Financial Information

A CSA Staff Notice has been issued which will provide guidance to issuers on Staff's expectations when a reporting issuer incorporated or organized in Canada (a "Canadian Reporting Issuer") distributes financial information prepared in accordance with accounting principles other than those generally accepted in Canada. Staff has noted an increase in the number of Canadian Reporting Issuers that are disclosing financial information prepared in accordance with U.S. GAAP in certain continuous disclosure and offering documents and has received requests for guidance.

The Notice says that a Canadian Reporting Issuer presenting foreign GAAP financial information in continuous disclosure and offering documents should clearly identify which set of GAAP is being used and, to the extent that more than one GAAP basis is used on a page, it will indicate, for each line item or section, which basis is being used. When Canadian and foreign GAAP financial statements are presented in the same document, each set of statements will be presented separately and the GAAP basis will be clearly identified. Any accompanying text will clearly state the GAAP basis of the financial information to which it relates and will be presented next to that financial information. To the extent that foreign GAAP information is presented, a reconciliation between the Canadian GAAP and foreign GAAP financial statements is encouraged, to explain the differences between the two sets of financial statements. When there is an auditor's report on the foreign GAAP financial statements, Staff expect the report to specify the set of GAAP which was used in preparing the financial statements and the GAAS which was followed by the auditor in auditing the financial statements.

For more information please call **Heidi Franken**, Manager, Continuous Disclosure Team, (416) 593-8249.

23 OSCB February 11, 2000 Page 905

Distribution Structures

On August 27, 1999, the CSA published the Distribution Structures Position Paper outlining the CSA position on a number of issues regarding the structures employed by registrants. These structures include referral arrangements, relationships between dealers and salespersons, and the use of trade names. The CSA have begun implementation of the Paper through communications, review of registrant compliance, and review of SRO rules. MFDA rules regarding distribution structures issues are expected to be published for comment in Spring 2000.

For more information, please call **Jennifer Elliott**, Legal Counsel, Market Regulation, (416) 593-8109.

Joint Forum Recommendations on Mutual/Seg Funds

Canadian securities and insurance regulators will move to harmonize securities and insurance regulations in order to protect and inform consumers of mutual funds and individual variable insurance contracts ("seg funds").

A working group of the Joint Forum of Financial Market Regulators has developed 15 recommendations for harmonizing securities and insurance regulations. Since consumer education is an important part of consumer protection, the working group has included a buyer's guide – containing objective and non-promotional information on both products – to help consumers make more informed purchasing decisions, and a mechanism to speed up complaint resolution between buyers and sellers.

The working group will consult with consumer and industry representatives as it moves to adapt the best practices in the various Canadian regulatory regimes for use in the others.

The recommendations have been posted on the websites of Canadian securities and insurance regulators.

For more information, please call **Rebecca Cowdery**, Manager, Investment Funds, (416) 593-8129.

22 OSCB December 19, 1999 Page 8067

Disclosure of Outstanding Share Data

National Instrument (NI) 62-102, Disclosure of Outstanding Share Data, came into force on March 15, 2000. The purpose of NI 62-102 is to ensure that all reporting issuers provide reasonably current disclosure regarding their outstanding securities. The disclosures relate to the designation and number or principal amount, as of the latest practicable date, of (a) each class and series of voting or equity securities of the reporting issuer that are outstanding; (b) each class and series of securities of the reporting issuer that are outstanding and convertible into voting or equity securities; and (c) to the extent determinable, each class and series of voting or equity securities into which the securities in (b) are convertible.

The requirements of NI 62-102 could be satisfied by providing the disclosure in either annual and interim financial statements, or MD&A or other information accompanying those statements. The disclosure must be as of the nearest practicable date to the date of completion of the material in which it is presented. Further, the disclosures must be contained within information that is distributed to security-holders at the same time as the applicable annual or interim financial statements.

For more infomation, please call, **John Hughes**, Senior Accountant, Chief Accountant's Office, (416) 593-3695 or **Tanis MacLaren**, Special Advisor to the Chair, (416) 593-8259

Proposed Mutual Fund Amendments - Securities Lending and Repurchase Agreements

The Commission has published in a Special Supplement to the January 28, 2000 issue of the OSC Bulletin a notice of proposed amendments to National Instrument 81-102 Mutual Funds and National Instrument 81-101 Mutual Fund Prospectus Disclosure. The proposed amendments, once finalized, will permit mutual funds to participate in specified securities lending, repurchase and reverse repurchase transactions. The proposed amendments have gone out for a 90 day comment period.

For more information, please call **Darren McKall**, Legal Counsel, Market Regulation, (416) 593-8118.

23 OSCB January 28, 2000 (Special Supplement)

Canadian Venture Exchange

Effective November 26, 1999, the Alberta Stock Exchange and the Vancouver Stock Exchange merged to form the Canadian Venture Exchange (CDNX).

Certain of the existing regulations, rules, orders, policies, notices or other instruments ("Exchange Provisions") in the jurisdictions of various Canadian Securities Administrators may refer to the VSE or ASE or both. As circumstances permit, the relevant securities regulatory authorities will be reviewing proposed amendments to their respective Exchange Provisions to reflect the merger. Until further notice, references to the VSE or the ASE may be treated and interpreted as references to CDNX.

ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information, please call the OSC at (416) 593-8314.

Michael Cowpland and M.C.J.C. Holdings Inc.
Date set for Motion in Cowpland matter

A judicial pre-trial conference was held on January 14, 2000 in the Ontario Court of Justice proceeding against Michael Cowpland and M.C.J.C. Holdings Inc. The defendants brought a motion to seek to change the venue of the trial from Toronto to Ottawa. The motion was heard on February 24, 2000. A decision on the matter has been reserved to March 23rd.

Mikael Prydz
Commission approves settlement agreement

The Commission approved a settlement agreement reached between Staff of the Commission and Mikael Prydz. The settlement relates to a Notice of Hearing and Statement of Allegations which were issued against Mr. Prydz on January 31, 2000. Staff alleged that Mr. Prydz sold securities to Ontario investors without being registered, sold securities which were not qualified by a prospectus and none of the prospectus exemptions was available for the distribution of the securities, acted as an adviser in the category of portfolio manager without being registered in this capacity, and failed to assess the suitability of investments for investors, guaranteed returns on investments and made misrepresentations to investors.

In the settlement agreement, Mr. Prydz agreed that his conduct as described above was contrary to the public interest. Mr. Prydz undertook that he would never apply for registration in any capacity, that he would send a letter to each of the investors to inform them of his sanction and identify the status of their investments, and that he would remove any reference on the Web site of his current employer to his involvement in the investment industry. The Commission issued a cease trading order for a period of five years and reprimanded him.

Phoenix Research and Trading Corporation
OSC places terms and conditions on Phoenix Research and Trading Corporation

The Ontario Securities Commission has imposed Terms and Conditions of Registration on Phoenix Research and Trading Corporation, as a precautionary move intended to protect Canadian investors. The terms and conditions were imposed in the wake of the announcement by the company that it experienced 'trading irregularities' in one of its hedge funds.

"Terms and Conditions of Registration are designed to allow companies to continue in business with enhanced supervisory requirements," said Michael Watson, Director of Enforcement. "This will give the Staff of the Commission the ability to work closely with Phoenix Research and Trading Corporation to safeguard the interests of investors who deal with the company."

The Terms and Conditions of Registration included requirements that Phoenix Research and Trading Corporation must:

- file with the OSC by February 21, 2000 a written report prepared by a forensic accounting firm acceptable to the Commission which provides a forensic review of all transactions in respect of the irregular trading activities in any funds managed or advised by Phoenix Research and Trading Corporation; and
- immediately retain a Monitor acceptable to the OSC to review the adequacy of their trade supervision and risk management policies and procedures.

The OSC has asked Phoenix Research and Trading Corporation to submit a follow-up report to the initial Forensic Accountant report filed on February 28.

The second report will provide further detail of any potential irregular trading activities identified in the initial report.

Anwar Heidary and James Sylvester
Settlement agreements entered into between Staff and Anwar Heidary and James Sylvester

The Commission has approved settlement agreements entered into between Staff and Anwar Heidary ("Heidary") and James Sylvester ("Sylvester"). The settlement agreements relate to a Notice of Hearing and Statement of Allegations which were issued against Heidary and Sylvester on September 7, 1999. In the proceeding, Staff alleged that Heidary and Sylvester sold securities to Ontario investors without being registered with the Commission. In addition, the securities which were sold were not qualified by a prospectus and none of the prospectus exemptions was available for the distribution of the securities.

The Commission approved an Order that Heidary is prohibited from trading in securities for a period of five years with some limited exceptions.

The Commission approved an Order that Sylvester is prohibited from trading in securities for a period of five years with some limited exceptions.

YBM Magnex International Inc.
OSC releases Decision on Motion for Disclosure

On January 25, 2000, the Ontario Securities Commission released its Decision on a Motion for Disclosure in connection with proceedings re: YBM Magnex International Inc.

The motions were heard on December 21 and 22, 1999. In addition to the motions for disclosure, a motion on behalf of Mr. Peterson for recusal of Mr. Jay Naster was heard on December 21 and 22, 1999. The decision and reasons on the motion for recusal dated January 5, 2000, contained a summary of the Statement of Allegations dated November 1, 1999. This decision and reasons only pertain to the motion for disclosure, not to any other matter.

Mr. Wilder did not participate in this hearing and has brought an application in the nature of prohibition and certiorari which is to be heard on February 15, 2000 in the Divisional Court. In response to this application, on December 17, 1999, Staff served and filed six affidavits and substantial documentation in the Divisional Court. These affidavits and documents deal exclusively with the second ground in the application, that is, "the alleged bias, partiality and unfairness arising out of the prospectus receipt process in 1997". Counsel for Staff, Mr. Code, submits that the affidavits and documentation reveal the state of the Staff's knowledge at the time and also explain in considerable detail the basis for the Director's decision in 1997 to receipt the prospectus.

On January 21, 2000, the Notice of Application in the Divisional Court was amended and the second ground of "alleged bias, partiality and unfairness arising out of the prospectus receipt process in 1997" was withdrawn.

The Applicants agreed that in order to defend themselves against the Commission's allegations, they require disclosure of all documents that indicate what information Commission Staff had when they decided to receipt the YBM prospectus.

Counsel for Staff argued that Staff will call as evidence the information that was in the possession of YBM officials and directors in March and April, 1997 and again in March and April, 1998. That information will be contrasted with what was disclosed publicly to investors. Whatever information or knowledge Staff possessed is not relevant to these issues, it was argued.

Decision

The Applicants have been provided with much more than the minimum disclosure required to enable them to meet the case. Nevertheless, the obligation to disclose is ongoing and, as the facts in issue in this case are developed, further production may or may not be required and can be dealt with by motion at a later date if necessary. No further order for disclosure is required at this time.

DJL Capital Corp. and Dennis John Little
Commission issues temporary cease trade order against DJL Capital Corp. and Dennis John Little

On January 11, 2000, the Ontario Securities Commission (the "Commission") issued a Temporary Cease Trade Order ("the Temporary Order") against DJL Capital Corp. ("DJL Capital") and Dennis John Little ("Little").

The Temporary Order states that during the period from September, 1997 to September, 1998, DJL Capital accepted subscriptions to units in DJL Capital from investors residing in Ontario and raised funds in the amount of (at least) Cdn. $800,000.00. It is alleged that DJL Capital and Little traded in securities without having filed a prospectus, failed to disclose to investors that funds accepted from investors were not used for the purposes set out in an Offering Memorandum, that investors have not received dividends contrary to the representations made by DJL Capital and Little, that DJL Capital and/or Little have not repaid funds or repurchased shares from investors, and that DJL Capital and/or Little made various representations which were misleading to investors and contrary to the public interest.

On January 21, 2000, the Ontario Securities Commission issued an Order continuing the Temporary Cease Trading Order made against DJL Capital Corp. on January 11, 2000, pending the conclusion of the hearing against DJL Capital and Little. The hearing in respect of DJL Capital and Little is adjourned, and further notification will be provided once dates are scheduled for the hearing. The respondents consented to the terms of the Order.

In addition to this proceeding, DJL Capital and Little are named as respondents in another matter before the Commission. On October 13, 1999, the Commission issued a Notice of Hearing and Statement of Allegations against DJL Capital, Little, Dual Capital Management Limited ("Dual Capital") and other respondents that DJL Capital was the promoter of the offering for the sale of units in Dual Capital Limited Partnership (the "Dual Capital Partnership"). During the material times, Little was the sole director and trading officer. It is alleged that DJL Capital and/or Little received payments from Dual Capital, the general partner, in the amount of approximately U.S. $161,525.00 when DJL Capital and/or Little knew that the sources of payments were funds received from investors and not income earned from any investment made by Dual Capital Partnership. This matter is presently adjourned.

Regal Capital Planners Ltd.
Commission approves settlement agreement

At a hearing on February 8, 2000, the Commission approved a settlement entered into between Staff and Regal Capital Planners Ltd. ("Regal") is a registered mutual fund and limited market dealer. The allegations made by Staff relate to Regal's supervision of Pierre Montpellier, a registered salesperson in Regal's Sudbury office. Montpellier is alleged to have sold over $4 million of investments in Foreign Capital Corporation, causing millions of dollars of losses to investors.

The Commission reprimanded Regal and ordered it to submit to a review of its practices and procedures, and to implement such changes as may be ordered. Regal will also make a payment of $100,000 to the Commission, and will make a contribution of $20,000 toward the Commission's costs of investigating the matter.

Regal has been purchased by BRM Capital Corporation. The settlement is conditional on the closing of the sale. An escrow of $5 million has been set aside from the proceeds of the sale to respond to any claims made against Regal.

David Singh and Paul Tindall
Commission sets hearing date

On February 8, 2000, the Commission set a hearing date in the proceeding against David Singh and Paul Tindall. The hearing will commence on July 31, 2000 and is scheduled for three weeks.

On October 14, 1999, the Commission issued a Notice of Hearing and Statement of Allegations against David Singh, the former president of Fortune Financial Corporation, and Paul Tindall, a former salesperson employed by Fortune.

RECENT SPEECHES

Remarks by David Brown, Q.C., OSC Chair,
Canadian Institute Superconference, February 9, 2000

Our regulatory institutions have to adjust to the quicksilver pace of innovation. We must learn to live in a borderless world, with changing demographics of investors and to the changing nature of investment.

In other words, regulators have to catch up with the pace of change. How do we do that? I believe that regulators must actively pursue change on four fronts.

First, we're going to have to look ahead, and anticipate trends instead of waiting for them to envelop us. It is no longer simply enough to react — we're going to have to become increasingly pro-active. If regulation is to remain relevant, we're going to have to develop a new concept of time.

The private sector began to recognize the commercial opportunities offered by the Internet immediately. Shouldn't the regulatory sector develop the same kind of antennae?

We have to look at financial products when they are in their embryonic stages, usually when they are still aimed at the institutional market. In that way, we can identify and address the regulatory needs they will prompt when they are released to the retail market. At the OSC, we're starting to take steps to anticipate developments in our markets. For example, we are participating in the development of international accounting standards that would make truly global offerings of securities simpler. We are also working with industry leaders to prepare for a move by major trading markets to T + 1; in other words, to shorten the period of time it takes to settle securities trades to next day settlement.

Second, we have to look at everything we're doing, and apply twin tests: Are we facilitating the creation of a viable financial market that will be attractive to foreign and Canadian investors? A market they will find secure, flexible and dynamic? And are we hampering the efforts of Canadian financial sector participants to be competitive with their global counterparts? In the legislation governing Canadian financial regulatory bodies, the competitive issues generally aren't dealt with directly. Much of this legislation was shaped before investors had access to 1-800 numbers, much less the Internet.

To reiterate: people are going to look for the cheapest trades and the best service, and they aren't going to let a border stop them. Canadian entities have to be able to compete. That means Canadian regulatory bodies are going to have to take competitive considerations into consideration.

And we are: competitive concerns are key elements in our work on regulating the new securities market — the market that isn't restricted to trades started by a call to your broker and completes on the floor of a traditional stock exchange. We've recently published proposed rules which will permit alternative electronic trading systems to operate in Canada. Alternative trading systems (ATSs) are direct competitors to the traditional stock exchange and this fact drives both the proposed regimes for ATSs and for a demutualized Toronto Stock Exchange. We are reassessing the application of our "know-your-client" and suitability rules to discount brokers and others who provide trade execution services but no advice.

Third, regulatory bodies are going to have to undergo a revolution in how we deal with all of our constituents. We're going to have to develop a mindset in which all market participants are customers.

The OSC has been taking a number of steps to make regulation a user-friendly activity — speedy, open, accessible, and understandable. We're shaping a mindset in which our constituents are seen as customers, and treated that way.

We're operating like a business with a three-year business plan. We've increased front-line staff, and streamlined operations. A year ago, more than 500 files were backlogged in our inquiries branch for a year to 15 months. We've eliminated the backlog, and set time targets for all inquiries. Every piece of correspondence is responded to within 48 hours. 95 percent of e-mails are answered the same day.

Businesses take customer focus for granted. Government bodies must make it a goal.

We're putting ourselves in the shoes of the people we deal with. The format of our annual report has been revised to make it more informative. We've launched a stakeholder survey to find out what our customers think of our service, and how it can be improved.

We're recognizing that regulators have customers — and we're treating them that way.

The fourth priority must be educational — a regulator must also be an educator. As more and more people invest, investor education is becoming a crucial aspect of investor protection. The OSC is pursuing a mandate to promote investor literacy. We're devoting more resources — time, money and staff — to this area. We're working with partners — not just the investment professionals, but also community organizations. We can no longer afford to leave investor education in the hands of the product vendors.

(New Integrated Disclosure System)

- The content, timing and standard of continuous disclosure reporting;
- The content and delivery of prospectuses;
- The form, content and timing of permissible marketing communications; and
- A shift of the regulatory review focus from prospectuses to continuous disclosure.

The IDS Disclosure Base

The cornerstone of the IDS disclosure base would be the IDS annual information form (IDS AIF), which would provide an annual consolidation of information about the issuer's business and affairs. It would be supplemented by a quarterly information form (QIF) as well as a supplementary information form (SIF) on significant events affecting the issuer. The CSA are also proposing a number of enhancements to continuous disclosure requirements so that they meet or exceed prospectus disclosure standards. The CSA are also considering extending the requirements to issuers that do not participate in the IDS.

Among the enhancements are:

- Reconciliation to Canadian GAAP and GAAS would be required for all annual financial statements;
- Reconciliation to Canadian GAAP would be required for all interim financial statements;
- Interim financial statements would be required to include a balance sheet and enhanced note disclosure;
- Audit committee review of all financial statements;
- The issuer's board of directors would be required to approve all financial statements;

Marketing communications would be permitted at any time.

- Annual financial statements would be filed within 90 days of year end;
- Interim financial statements would be filed within 45 days of period end;

Content and Delivery of Prospectuses

The IDS would place greater emphasis on the preliminary IDS prospectus to give potential investors access to comprehensive information before making an investment decision. Under the IDS, an agreement to purchase a security would not be enforceable unless the purchaser had first received a copy of the preliminary prospectus and any amendment. With the enhanced IDS disclosure base in place, a preliminary prospectus would only be required to contain disclosure relating to the offering, the offered securities and associated risk factors, and investors' statutory rights. Most issuer disclosure could be incorporated from the IDS disclosure base.

Under the IDS, the CSA are proposing a streamlined or checklist form of the financial prospectus that would incorporate by reference much of the information in the preliminary prospectus, but the CSA also are providing issuers with the option of delivering to investors the more traditional form of final prospectus.

Marketing Communications During a Distribution

Currently, securities regulation restricts marketing communications during a distribution of securities, so that investors are not misled by marketing or promotional efforts. Because the IDS would enhance continuous disclosure, many of the concerns about marketing should be alleviated. Under the IDS, restrictions are more clearly directed towards deterring the dissemination of misleading information. To ensure the integrity of marketing communications, however, the IDS would require that all written marketing materials issued during a distribution of securities would have to be identified and incorporated by reference in the prospectus.

Broad Access to a Streamlined Prospectus

At present, certain issuers are eligible to use a short form prospectus in order to speed the offering process. In contrast, almost all classes of issuers listed on major exchanges may qualify for the proposed IDS. However, the concept proposal is floating the suggestion that to be eligible for IDS, an issuer must be a reporting issuer in all jurisdictions in Canada. The CSA are seeking comment on this requirement, as well as whether a seasoning or quantitative requirement should be imposed.

Under the IDS, restrictions are more clearly directed towards deterring the dissemination of misleading information.

Under the IDS, prospectus reviews would be limited in scope, focusing on IDS ineligibility and grounds for receipt refusal. The timing of approvals would therefore be faster and more predictable. At the same time, there would be more frequent and extensive reviews of an issuer's disclosure base.

For more information, please call **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245, **Rose Fergusson**, Senior Accountant, Corporate Finance, (416) 593-8116, **Gary Tamura**, Legal Counsel, Corporate Finance, (416) 593-8119.

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If you wish to be on the mailing list for *Perspectives*, please contact us at:

Perspectives,
Ontario Securities Commission
Corporate Relations Branch
20 Queen St. West
Toronto, M5H 3S8
(416) 593-8117

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Information on the OSC; Investor Information, Rules and Regulations, Enforcement Information and Market Participants.